

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NORTHWEST
ADMINISTRATORS, INC.,

Plaintiff,

v.

NATIONAL CONVENTION
SERVICES, LLC,

Defendant.

CASE NO. C22-1519JLR

ORDER

I. INTRODUCTION

Before the court is Plaintiff Northwest Administrators Inc.’s (“Northwest Administrators”) motion for default judgment (Mot. (Dkt. # 8)) against Defendant National Convention Services, LLC (“NCS”). NCS, which has not appeared in this action, did not file a response to the motion. (*See generally* Dkt.) The court has

1 considered the motion, the balance of the record, and applicable law. Being fully
2 advised,¹ the court GRANTS Northwest Administrators's motion.

3 II. BACKGROUND

4 Northwest Administrators is the authorized administrative agency for the Western
5 Conference of Teamsters Pension Trust (the "Trust"). (Hughes Decl. (Dkt. # 9) ¶ 2.) The
6 Trust is a joint labor-management fund created pursuant to Section 302 of the Labor
7 Management Relations Act ("LMRA"), 29 U.S.C. § 186(c), and the Employee
8 Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001, *et seq.* (See Compl. (Dkt.
9 # 1) ¶¶ II, III; Hughes Decl. ¶ 6.) The Trust is funded by employer contributions made on
10 behalf of employees who are covered by the collective bargaining agreement (the
11 "CBA") between Teamsters Local 631 (the "Union") and the employers of its members,
12 including NCS. (See Hughes Decl. ¶ 5, Ex. A ("Local 631 CBA").) NCS executed an
13 Employer-Union Pension Certification binding it to the terms of the CBA on August 19,
14 1994. (*Id.* at 2.²) NCS employs some members of the Union and, under the terms of the
15 CBA, is responsible for paying and reporting monthly contributions to the Trust. (*Id.*;
16 Compl. ¶ VI.) Northwest Administrators is a trustee of the Trust and owes a fiduciary
17 duty to the Union and other member unions to collect employer contributions on behalf
18 of the Trust. (Hughes Decl. ¶ 19.)

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20 ¹ Northwest Administrators did not request oral argument. (See Mot at 1.) The court
21 concludes that oral argument would not be helpful to its disposition of this motion. See Local
22 Rules W.D. Wash. LCR 7(b)(4).

² The court cites to the CM/ECF page numbers in the document headers when referring to
the parties' exhibits.

1 The CBA sets forth the contribution rate, which must be paid by NCS on an
 2 employee's behalf on a dollars-per-hour-worked basis. (Local 631 CBA, Art. 23 at 59-60
 3 (setting forth employer contribution rates); Arts. 21-22 (describing pension and health
 4 and welfare benefits).) The specific terms of the Trust are set forth in the parties' Trust
 5 Agreement and incorporated by reference in the CBA. (See Local 361 CBA at 2; Hughes
 6 Decl. ¶ 10, Ex. C ("Trust Agreement"); *see also id.*, Ex. B ("2017 Trust Agreement").³)
 7 The Trust Agreement provides that an employer who is delinquent on payments is liable
 8 for the amounts owed plus interest and 20% of the delinquent contribution amounts and
 9 interest in liquidated damages. (Trust Agreement, Art. IV at 14.) The interest rates are
 10 set forth in the IRC 6621 Table of Underpayment Rates. (See Reid Aff. (Dkt. # 8)⁴ ¶ 10,
 11 Ex. B ("Table of Underpayment Rates").) The Trust Agreement further provides that the
 12 employer will pay reasonable attorneys' fees and court costs incurred in recovering any
 13 delinquent payments. (*Id.*)

14 Northwest Administrators alleges that between January 1, 2017, and December 13,
 15 2021, NCS failed to make certain contributions required by the CBA and the Trust
 16 Agreement. (Compl. ¶ VIII; Hughes Decl. ¶ 12.) Northwest Administrators states that it
 17 conducted an audit and determined that during this period, NCS failed to make

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 19 ³ This action concerns contributions due between January 1, 2017, and December 13,
 20 2021. (Hughes Decl. ¶ 11, Ex. D ("Audit Report").) During that period, Local 361 and its
 21 employers renegotiated and renewed the Trust Agreement, but the provisions regarding
 collection of employer contributions are identical in both versions. (*Compare* Trust Agreement,
 Art. IV at 14 (2020), *with* 2017 Trust Agreement, Art. IV at 14.) For simplicity, the court refers
 to the Trust Agreement the parties executed in 2020 throughout this order.

22 ⁴ Mr. Reid's affidavit begins on page 2 of Northwest Administrators's motion for default
 judgment (Dkt. # 8).

1 contributions totaling \$5,131.35. (Audit Report at 4.) Northwest Administrators further
 2 calculates that NCS is liable for \$1,032.60 in interest through February 28, 2023, and
 3 \$1,062.67 in liquidated damages. (Hughes Decl. ¶ 14, Ex. D (“Damages Spreadsheet”) at
 4 2.) Finally, Northwest Administrators asserts that it has incurred \$1,122.00 in attorneys’
 5 fees and \$662.00 in court costs and seeks to recover both from NCS. (*Id.*; *see also* Reid
 6 Aff. ¶ 14, Ex. C (“Billing Records”).)

7 Northwest Administrators filed this lawsuit to collect unpaid trust funds pursuant
 8 to ERISA and the LMRA on October 6, 2022. (*See* Compl. ¶ III.) Northwest
 9 Administrators served a summons and copy of the complaint on Kevin Page, NCS’s
 10 general counsel, on January 3, 2023.⁵ (2d Aff. of Serv. (Dkt. # 5).) NCS has not
 11 appeared in this action or responded to Northwest Administrators’s complaint. (*See*
 12 *generally* Dkt.) On February 24, 2023, Northwest Administrators moved for entry of
 13 default against NCS (Mot. for Default (Dkt. # 6)), and the Clerk entered default on
 14 February 27, 2023 (Entry of Default (Dkt. # 7)). On March 2, 2023, James Angelino,
 15 NCS’s purported sole owner, filed a motion styled as an answer to the complaint on
 16 behalf of NCS, which wished to proceed *pro se*. (*See* Pro Se Ans. (Dkt. # 10).) Because
 17 an artificial entity such as a limited liability company—of which NCS is one—cannot
 18 represent itself, or be represented by a non-attorney, the court struck this pleading. (*See*

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 22 ⁵ Northwest Administrators also submitted an affidavit of service dated November 7,
 2022, indicating that the address given to the process server was a P.O. Box facility. (1st Aff. of
 Serv. (Dkt. # 4).)

3/3/23 Min Order (Dkt. # 11).) NCS has not filed any other pleading in this action. (*See generally* Dkt.)

III. ANALYSIS

The court begins by discussing the relevant legal standard before turning to Northwest Administrators's motion.

A. Legal Standard

If a defendant fails to plead or otherwise defend, the clerk enters the party's default. Fed. R. Civ. P. 55(a). Then, upon a plaintiff's request or motion, the court may grant default judgment for the plaintiff. *Id.* 55(b)(2). Entry of default judgment is left to the court's sound discretion. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). Because granting or denying relief is within the court's discretion, a defendant's default does not automatically entitle a plaintiff to a court-ordered judgment. *Id.* In exercising its discretion, the court considers seven factors (the "*Eitel* factors"): (1) the possibility of prejudice to the plaintiff if relief is denied; (2) the substantive merits of the plaintiff's claims; (3) the sufficiency of the claims raised in the complaint; (4) the sum of money at stake in relationship to the defendant's behavior; (5) the possibility of a dispute concerning material facts; (6) whether default was due to excusable neglect; and (7) the preference for decisions on the merits when reasonably possible. *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

Default judgment is a two-step process: first, the court determines that a default judgment should be entered; and second, the court determines the amount and character of the relief that should be awarded. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915,

917-18 (9th Cir. 1987). At the default judgment stage, well-pleaded factual allegations in the complaint, except those related to damages, are considered admitted and are sufficient to establish a defendant’s liability. *Id.*; *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977); Fed. R. Civ. P. 8(b)(6). The court must ensure that the amount of damages is reasonable and demonstrated by the plaintiff’s evidence.⁶ *See* Fed. R. Civ. P. 55(b); *TeleVideo*, 826 F.2d at 917-18; *LG Elecs., Inc. v. Advance Creative Comput. Corp.*, 212 F. Supp. 2d 1171, 1178 (N.D. Cal. 2002) (“[T]he evident policy of [Rule 55(b)] is that even a defaulting party is entitled to have its opponent produce some evidence to support an award of damages.”). And “[a] default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings.” Fed. R. Civ. P. 54(c).

B. Jurisdiction

“To avoid entering a default judgment that can later be successfully attacked as void, a court should determine whether it has the power, i.e., the jurisdiction, to enter the

⁶ Additionally, this court’s Local Rules require plaintiffs to support a motion for default judgment with:

a declaration and other evidence establishing [the] plaintiff’s entitlement to a sum certain. [The] [p]laintiff shall provide a concise explanation of how all amounts were calculated, and shall support this explanation with evidence establishing the entitlement to and amount of the principal claim, and, if applicable, any liquidated damages, interest, attorney’s fees, or other amounts sought If plaintiff seeks attorney’s fees, plaintiff must state the basis for an award of fees and include a declaration from plaintiff’s counsel establishing the reasonable amount of fees to be awarded, including, if applicable, counsel’s hourly rate, the number of hours worked, and the tasks performed.

Local Rules W.D. Wash. LCR 55(b)(2).

judgment in the first place.” *See In re Tuli*, 172 F.3d 707, 712 (9th Cir. 1999). First, there can be no reasonable dispute that the court has subject matter jurisdiction over this matter. Northwest Administrators filed this case to enforce its clients’ rights under federal law: namely, under ERISA, 29 U.S.C. § 1132(e)(1), and the LMRA, 29 U.S.C. § 185(a). *See* 28 U.S.C. § 1331; (Compl. ¶ III).

Second, the court has personal jurisdiction over NCS. ERISA authorizes nationwide service of process and provides that service on a defendant anywhere in the United States is sufficient to establish personal jurisdiction. *Cripps v. Life Ins. Co. of N. America*, 980 F.2d 1261, 1267 (9th Cir. 1992) (citing 29 U.S.C. § 1132(e)(2)). NCS was properly served by Northwest Administrators with the time period provided by Rule 4(m). (*See* 2d Aff. of Service); *see also* Fed. R. Civ. P. 4(m) (requiring service on a defendant within 90 days after the complaint is filed). Accordingly, this court has subject matter jurisdiction over Northwest Administrators’s claims and personal jurisdiction over NCS.

C. The *Eitel* Factors

Below, the court analyzes each *Eitel* factor and concludes that the factors weigh in favor of default judgment.

1. The Possibility of Prejudice to Plaintiff

Under this factor, default judgment is favored where “the plaintiff has ‘no recourse for recovery’ other than default judgment.” *Curtis v. Illumination Arts, Inc.*, 33 F. Supp. 3d 1200, 1211 (W.D. Wash. 2014) (quoting *Philip Morris USA, Inc. v. Castworld Prods., Inc.*, 219 F.R.D. 494, 499 (C.D. Cal. 2003)). Here, despite timely service of process,

1 NCS has failed to defend itself in this litigation. (*See Dkt.*) As a result, Northwest
 2 Administrators will suffer prejudice if default judgment is not entered because it will “be
 3 denied the right to judicial resolution” of its claims. *Elektra Entm’t Grp. Inc. v.*
 4 *Crawford*, 226 F.R.D. 388, 391 (C.D. Cal. 2005). This factor therefore weighs in favor
 5 of default judgment.

6 2. The Substantive Merits and Sufficiency of the Claim

7 The second and third *Eitel* factors, which are frequently analyzed together, require
 8 the plaintiff to “state a claim on which the [plaintiff] may recover.” *PepsiCo, Inc. v. Cal.*
 9 *Sec. Cans*, 238 F. Supp. 2d 1172, 1175 (C.D. Cal. 2002). The plaintiff satisfies this
 10 standard by making claims that “cross the line from conceivable to plausible.” *Ashcroft*
 11 *v. Iqbal*, 556 U.S. 662, 680 (2009). At the default judgment stage, the court “takes ‘the
 12 well-pleaded factual allegations’ in the complaint ‘as true’”; however, “necessary facts
 13 not contained in the pleadings, and claims which are legally insufficient, are not
 14 established by default.” *DIRECTV, Inc. v. Hoa Huynh*, 503 F.3d 847, 854 (9th Cir.
 15 2007); *Cripps v. Life Ins. Co. of N. Am.*, 980 F.2d 1261, 1267 (9th Cir. 1992).

16 Northwest Administrators seeks to recover unpaid contributions to a
 17 multiemployer trust fund under ERISA and the LMRA. (*See generally* Compl.); *see also*
 18 29 U.S.C. § 1145 (requiring “every employer who is obligated to make contributions to a
 19 multiemployer plan . . . [to] make [them] in accordance with the terms and conditions of
 20 such plan or agreement.”); 29 U.S.C. § 1132(a)(3) (establishing a fiduciary’s right to sue
 21 to enforce the terms of multiemployer plans). In order to successfully assert this claim,
 22 Northwest Administrators must prove: (1) that the Trust is a multiemployer trust; (2) that

1 the CBA and Trust Agreement obligated NCS to make employee benefit contributions;
 2 and (3) that NCS failed to make contribution payments. *See Bd. of Trs. of the Sheet*
 3 *Metal Workers Health Care Plan of N. Cal. v. Gervasio Envtl. Sys.*, No. C03-04858, 2004
 4 WL 1465719, at *2 (N.D. Cal. May 21, 2004) (stating the elements of a claim to recover
 5 unpaid contributions from a multiemployer plan under ERISA).

6 The court concludes that Northwest Administrators has adequately alleged and
 7 supported each of these elements. Northwest Administrators's complaint and supporting
 8 documents establish the following: (1) the Trust was set up as a multiemployer benefit
 9 plan under ERISA and the LMRA (*see* Compl. ¶¶ II-III; Trust Agreement); (2) NCS
 10 executed an Employer-Union Pension Certification binding it to the terms of the CBA,
 11 and thus, the Trust Agreement (Compl. ¶ VI; Local 631 CBA at 2); and (3) an audit
 12 revealed that NCS failed to make contribution payments required by the CBA and Trust
 13 Agreement (*see* Compl. ¶ VIII; Audit Report). Accordingly, both the second and third
 14 *Eitel* factors weigh in favor of default judgment.

15 3. The Sum of Money at Stake in Relationship to NCS's Behavior

16 The fourth *Eitel* factor weighs in favor of default when "the recovery sought is
 17 proportional to the harm caused by defendant's conduct." *Landstar Ranger, Inc. v. Parth*
 18 *Enter., Inc.*, 725 F. Supp. 2d 916, 921 (N.D. Cal. 2010); *see also Emp. Painters' Tr. v.*
 19 *Cascade Coatings*, No. C12-0101JLR, 2014 WL 526776, at *6 (W.D. Wash. Feb. 10,
 20 2014) (concluding that this factor weighed against default because the amount of money
 21 requested was unreasonable in light of the loss caused by the defendant's actions).

Here, Northwest Administrators seeks to recover the following damages:

(1) \$5,313.35 in unpaid contributions; (2) \$1,032.60 in interest through February 28, 2023; (3) \$1,062.67 in liquidated damages; (4) \$1,122.00 in attorneys' fees; and (5) \$662.00 in litigation costs. (Spreadsheet at 2.) In total, Northwest Administrators seeks \$9,192.62. (*Id.*) The court finds this amount is proportionate to NCS's conduct, which constitutes failing to pay the required contributions, particularly in light of the parties' agreements setting forth each of these remedies. (Compl. ¶¶ VI-VII; *see also* Trust Agreement, Art. IV at 14 (providing that an employer who is delinquent on payments is liable for the amounts owed plus interest and 20% of the delinquent contribution amounts and interest in liquidated damages as well as reasonable attorneys' fees and costs); Local 631 CBA, Art. 23 at 59-60 (setting forth employer contribution rates); Table of Underpayment Rates (setting interest rates on delinquent payments).) Because Northwest Administrators seeks only the remedies available under the parties' agreements, the court concludes that the recovery sought is proportional to the harm caused by NCS's conduct. *See Landstar*, 725 F. Supp. 2d at 921. This fourth *Eitel* factor, too, weighs in favor of default judgment.

4. The Possibility of a Dispute Concerning Material Facts

There is no dispute as to any material facts here because NCS has failed to appear; the court must therefore accept as true all well-pleaded allegations in the complaint, other than those related to damages. *TeleVideo*, 826 F.2d 917-18. Although NCS's owner filed a pleading styled as an answer, the court struck that pleading because NCS cannot represent itself or be represented by a *pro se* party. (*See* 3/3/23 Min Order.) The court

1 will not consider the content of the stricken pleading. (*See id.*) Seven days have passed
2 since the pleading was stricken and NCS has not appeared in this action. (*See Dkt.*)
3 Moreover, Northwest Administrators’s billing records indicate that counsel for Northwest
4 Administrators communicated with counsel for NCS regarding Northwest
5 Administrators’s intent to seek default, before filing either the motion for default or the
6 instant motion. (Billing Records at 2.) Accordingly, there is nothing to suggest a
7 possible dispute of material facts, and this factor therefore weighs in favor of granting
8 default judgment.

9 5. Whether Default was Due to Excusable Neglect

10 Courts may consider whether there are circumstances surrounding a party’s failure
11 to respond that constitute excusable neglect. *Eitel*, 782 F.2d at 1472 (finding defendant’s
12 failure to answer due to excusable neglect where the parties reached a settlement
13 agreement prior to the deadline to answer). However, excusable neglect may “be lacking
14 where a defendant was properly served with the complaint and notice of default
15 judgment.” *Indian Hills Holdings, LLC v. Frye*, 572 F. Supp. 3d 872, 889-90 (S.D. Cal.
16 2021). Here, Northwest Administrators timely served NCS with a summons and copy of
17 the complaint on January 3, 2023. (*See* 2d Aff. of Serv.) NCS’s deadline to answer the
18 complaint was January 24, 2023. *See* Fed. R. Civ. P. 12(a)(1)(A)(i) (“A defendant must
19 serve an answer within 21 days after being served with the summons and complaint.”).
20 NCS did not file an answer (*see Dkt.*), but Northwest Administrators nevertheless waited
21 until February 24, 2023 to file its motion for default (*see Mot. for Default*). As discussed
22 above (*see supra* § III.C.4), the record indicates that Northwest Administrators discussed

1 its intent to seek default judgment with NCS (*see* Billing Records at 2). There is nothing
2 in the record to indicate that NCS lacked notice of the action or was misled.

3 Accordingly, the court concludes that NCS's failure to answer the complaint was not due
4 to excusable neglect and that the sixth *Eitel* factor thus weighs in favor of default
5 judgment.

6 6. The Preference for Decisions on the Merits

7 Although there is a preference for deciding cases on the merits, this preference is
8 not absolute. *See Vawter v. Quality Loan Serv. Corp. of Wash.*, No. C09-1585JLR, 2011
9 WL 1584424, at *3 (W.D. Wash. Apr. 27, 2011). Where, as here, the defendant's
10 "failure to answer [a c]omplaint makes a decision on the merits impractical, if not
11 impossible," the "preference to decide cases on the merits does not preclude [t]he court
12 from granting default judgment." *PepsiCo*, 238 F. Supp. 2d at 1177. NCS's failure to
13 answer Northwest Administrators's complaint makes adjudication on the merits
14 impossible. *See Bd. of Trs. of the Sheet Metal Workers Health Care Plan of N. Cal. v.*
15 *Gervasio Env'tl. Sys.*, 2004 WL 1465719, at *2 ("Although federal policy may favor
16 decisions on the merits, Rule 55(b) permits entry of default judgment in situations, such
17 as this, where the defendant refuses to litigate."). The court concludes that the seventh
18 and final *Eitel* factor also weighs in favor of default judgment.

19 Because the *Eitel* factors weigh heavily in favor of default judgment, the court
20 concludes that default judgment is warranted and turns to Northwest Administrators's
21 recovery.
22

D. Northwest Administrators's Recovery

“A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings.” Fed. R. Civ. P. 54(c); *see also Henry v. Sneiders*, 490 F.2d 315, 317, 317 n.2 (9th Cir. 1974) (noting that a plaintiff need not specify an exact amount in his complaint in order to comply with Rule 54(c)'s requirement and prevail on a motion for default judgment). Although the district court need not accept as true allegations regarding the amount of damages at this phase, *see TeleVideo*, 826 F.2d at 917, other factual allegations are accepted as true, including those establishing the extent of the defendant's liability, *Fair Housing of Marin v. Combs*, 285 F.3d 899, 906 (9th Cir. 2002).

Here, the damages Northwest Administrators seeks to recover do not differ from the relief requested in its complaint. (*See* Compl. ¶ VIII (requesting unpaid contributions, liquidated damages, accrued interest, attorneys' fees, and costs).) The CBA, Trust Agreement, and Table of Underpayment Rates contain specific provisions for calculating the contributions to be made, as well as the interest and liquidated damages assessed for delinquent contributions. (*See supra* §§ II, III.C.3.) Northwest Administrators has filed declarations with exhibits showing the damage and interest calculations. (*See* Reid Aff.; Hughes Decl.); *see also* Local Rules W.D. Wash. LCR 55(b)(2) (describing evidence a plaintiff must file in support of a motion for default judgment). The court concludes that Northwest Administrators may recover the \$5,313.35 in unpaid contributions, \$1,032.60 in interest, and \$1,062.67 in liquidated damages it seeks from NCS.

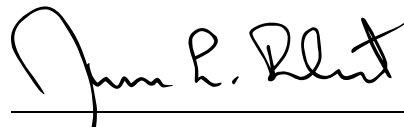
1 Northwest Administrators also requests \$1,122.00 in attorneys' fees and \$662.00
2 in costs, pursuant to Article IV, Section 3(b)(3) of the Local 361 CBA. (*See* Spreadsheet
3 at 2.) Counsel for Northwest Administrators has filed an exhibit describing the tasks
4 performed by his law firm in this action and hourly billing rates (Billing Records at 2) as
5 well as several orders from this District approving his firm's hourly rates (*see* Reid Aff.
6 ¶ 14, Ex. D). Northwest Administrators describes the litigation costs it seeks to recover
7 as: two process server fees and the filing fee in this court. (Billing Records at 3.) The
8 court finds the billing rates, tasks performed, time spent, and litigation costs incurred
9 reasonable and therefore recoverable under the terms of the CBA. (*See* Local 361 CBA,
10 Art. IV). Northwest Administrators may recover the \$1,122.00 in attorneys' fees and
11 \$662.00 in costs it seeks from NCS.

12 Accordingly, the court GRANTS Northwest Administrators's request for relief in
13 its entirety.

14 IV. CONCLUSION

15 For the foregoing reasons, the court GRANTS Northwest Administrators's motion
16 for default judgment (Dkt. # 8) and AWARDS Northwest Administrators damages in the
17 amount of \$9,192.62. The court DIRECTS the clerk to close this matter.

18 Dated this 10th day of March, 2023.

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21 JAMES L. ROBART
22 United States District Judge